

## Federal Communications Commission

DA 00-925

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

|  |   |                                    |
|--|---|------------------------------------|
| In the Matter of                           | ) |                                    |
|  | ) |                                    |
| ARCH COMMUNICATIONS GROUP, INC.            | ) | WT Docket No. 99-365               |
|  | ) |                                    |
| and  | ) | File No. 0000053846, <i>et al.</i> |
|  | ) | DA 99-3028                         |
| PAGING NETWORK, INC.                       | ) |                                    |
|  | ) |                                    |
| For Consent to Transfer Control of Paging, | ) |                                    |
| Narrowband PCS, and Other Licenses         | ) |                                    |

## MEMORANDUM OPINION AND ORDER

Adopted: April 25, 2000

Released: April 25, 2000

By the Chief, Wireless Telecommunications Bureau:

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## APPENDIX A

## I. INTRODUCTION

1. In this Order, we grant the applications of Arch Communications Group, Inc. (“Arch”) and Paging Network, Inc. (“PageNet”) (the “Applicants”) to transfer control of the licenses of each company to effectuate a merger between the two companies. We also grant the Applicants a temporary waiver of the narrowband PCS ownership restriction.

## II. BACKGROUND

2. Arch, the second largest U.S. paging carrier, is a provider of local, regional, and national paging services over digital networks in all 50 states. It operates paging facilities in more than 180 of the 200 most populated markets in the country, and its networks cover approximately 85 percent of the United States population. Arch offers several types of paging services: tone-only paging; tone-plus-voice paging; numeric paging (also known as digital display); alphanumeric paging (also known as text messaging); guaranteed messaging; and two-way messaging.<sup>1</sup> As of September 30, 1999, Arch had 7.2 million paging units in service.<sup>2</sup>

3. PageNet, the largest U.S. paging carrier, also offers local, regional, and nationwide coverage in all 50 states, plus the District of Columbia, U.S. Virgin Islands, and Puerto Rico. It has facilities-based services in all 100 of the most populated metropolitan markets in the country. PageNet’s paging services include: numeric paging; alphanumeric

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<sup>1</sup> Applications of Arch Communications Group, Inc. and Paging Network, Inc. for Transfers of Control, File No. 0000053846 (lead application), filed Dec. 13, 1999, Attachment 1 to Form 603 at 3 (“Public Interest Statement”). Tone-only pagers emit a beep or vibrate to let the subscriber know a message has been received from a known source; tone-plus-voice pagers provide a brief voice message in addition to alerting the subscriber to a message; numeric pagers display a telephone number or numeric message; alphanumeric pagers allow the user to receive text messages; guaranteed messaging pagers permit the storage of incoming messages and automatically forward the message when the subscriber returns to a full service coverage area; two-way messaging pagers permit a user to send as well as receive messages. *The Strategis Group, The State of the U.S. paging Industry: 1997* (1997), at 48; *Arch Communications* (visited Apr. 21, 2000) <<http://content.arch.com/products/services.html>>; *Arch Communications Advanced Paging* (visited Apr. 21, 2000) <<http://content.arch.com/products/advanced.html>>.

<sup>2</sup> See Public Interest Statement at 2-3.

paging; advanced messaging over one-way and two-way wireless networks; and content and information services. As of September 30, 1999, PageNet had approximately 9.3 million paging units in service.<sup>3</sup>

4. On December 13, 1999, Arch and PageNet filed applications pursuant to Section 310(d) of the Communications Act,<sup>4</sup> requesting Commission consent for the transfer of control of the licenses and authorizations of each company to a newly constituted, post-merger Arch ("New Arch") and a waiver of the narrowband PCS ownership restriction. New Arch would be controlled by a new, widely-dispersed group of investors that includes Arch's existing shareholders, certain of its bondholders, PageNet's stockholders, and PageNet's bondholders.<sup>5</sup> Under the terms of the proposed transaction, both current Arch and current PageNet stockholders and bondholders would receive stock in New Arch. When completed, the transaction would result in: (1) the transfer of control of PageNet from its current stockholders to New Arch; (2) the transfer of control of Arch from its current stockholders to New Arch; and (3) the *pro forma* transfer of control and/or assignment of all of PageNet's licenses to a new, wholly-owned, indirect subsidiary of New Arch to be called PageNet Holdings, Inc.<sup>6</sup> The licenses and authorizations currently held by Arch licensee subsidiaries would continue to be held by these same entities but would be controlled by New Arch.<sup>7</sup>

5. On December 30, 1999, by delegated authority,<sup>8</sup> the Wireless Telecommunications Bureau ("Bureau") issued a *Public Notice* announcing that Arch's and PageNet's applications had been accepted for filing and establishing a pleading cycle to enable interested parties to comment on the proposed transaction.<sup>9</sup> Two parties, Mobile Phone of Texas, Inc. ("Mobile Phone") and Teletouch Licenses, Inc. ("Teletouch"), filed petitions to deny; a third party, Metrocall, Inc. ("Metrocall"), proffered comments.<sup>10</sup> All three parties addressed the Applicants' request for a waiver of the narrowband PCS ownership restriction; no party has challenged the proposed transfers of control.

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> 47 U.S.C. § 310(d).

<sup>5</sup> Public Interest Statement at 3-6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 0.331.

<sup>9</sup> *Public Notice*, "Arch Communications Group, Inc. and Paging Network, Inc. Seek FCC Consent for a Proposed Transfer of Control," WT Docket No. 99-365, DA 99-3028 (rel. Dec. 30, 1999) ("*Public Notice*").

<sup>10</sup> *See generally* Petition to Deny, filed January 28, 2000, by Mobile Phone of Texas, Inc. ("Mobile Phone Petition"); Petition to Deny, filed January 28, 2000, by Teletouch Licenses, Inc. ("Teletouch Petition"); Comments of Metrocall, filed January 31, 2000 ("Metrocall Comments").

6. In their applications, the Applicants addressed PageNet's failing financial situation and the possibility that the merger with Arch would involve PageNet undergoing a pre-packaged Chapter 11 reorganization proceeding.<sup>11</sup> Since the applications were filed, PageNet has made public other information concerning its difficult financial situation. In January, PageNet informed the Securities and Exchange Commission of the possibility that the company might not be able to sustain sufficient cashflow to continue operating through the end of the first quarter of 2000.<sup>12</sup> In addition, PageNet failed to make a scheduled February 1, 2000 interest payment on its debt.<sup>13</sup> Recent public reports of PageNet's failing financial condition also indicate significant employee attrition and increasing loss of subscribers.<sup>14</sup>

### III. DISCUSSION

7. As explained below, we find that the proposed transferee, New Arch, is fully qualified to hold the licenses as proposed and that the transfer of control of the licenses does not pose an undue risk of harm to competition in U.S. telecommunications markets. In addition, we find that this transaction should result in certain public benefits. Accordingly, we conclude that, pursuant to section 310(d) of the Communications Act, grant of the pending applications will serve the public interest. Hence, we deny the petitions and grant the applications.<sup>15</sup>

#### A. Statutory Authority

8. Section 310(d) of the Communications Act provides, in pertinent part, that "[n]o construction permit, or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience,

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<sup>11</sup> Public Interest Statement at 10.

<sup>12</sup> See Paging Network, Inc., SEC Form S-4, filed with the Securities and Exchange Commission on January 11, 2000, at 121-128 (PageNet Management's Discussion and Analysis of Financial Condition and Results of Operations); see also Letter from Judith St. Ledger-Roty, Counsel for Paging Network, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, dated March 23, 2000.

<sup>13</sup> Letter from Kathryn A. Zachem and Kenneth D. Patrich, Counsel for Arch Communications Group, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, dated March 20, 2000 ("*March 20 Ex Parte Letter*").

<sup>14</sup> *Id.* In their *March 20 Ex Parte Letter*, the Applicants stated that, at the end of 1999, the number of PageNet units in service had dropped to 8.8 million, a decline of 500,000 during the fourth quarter of 1999.

<sup>15</sup> Arch and PageNet each hold Fixed Satellite Service and VSAT authorizations under Part 25 of the Commission's rules, 47 C.F.R. Part 25. See *Public Notice* at 7. The applications for transfer of control of these authorizations are not included in this Order and will be acted on by the International Bureau in a subsequent public notice.

and necessity will be served thereby.”<sup>16</sup> Section 310(d) also requires the Commission to consider a license transfer or assignment application as if it were filed pursuant to section 308 of the Communications Act, which governs applications for new facilities and for renewal of existing licenses.<sup>17</sup>

9. In applying the public interest test under Section 310(d), the Commission considers four overriding questions: (1) whether the transaction would result in a violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.<sup>18</sup> In summary, the Applicants bear the burden of demonstrating that the transaction will not violate or interfere with the objectives of the Act or Commission rules, and that the predominant effect of the transaction will be to advance the public interest.<sup>19</sup> Prior to approving the applications, we must determine whether the Applicants have met this burden.<sup>20</sup>

## B. Qualifications

10. In evaluating assignment and transfer applications under section 310(d) of the Communications Act, we do not re-evaluate the qualifications of the assignor or transferor unless issues related to its basic qualifications have been designated for hearing by the Commission or

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<sup>16</sup> 47 U.S.C. § 310(d).

<sup>17</sup> Section 310(d) provides that the Commission shall consider any such applications “as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question.” Furthermore, the Commission is expressly barred from considering “whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.” *Id.*

<sup>18</sup> See *Applications of Ameritech Corp. and SBC Communications Inc. for Transfer of Control*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, at ¶¶ 49-50 (rel. Oct. 8, 1999) (“*SBC/Ameritech Order*”); *Applications of WorldCom and MCI Communications Corporation*, 13 FCC Rcd 18,025, 18,030-33, ¶¶ 9-12 (“*WorldCom/MCI Order*”) (citing *Applications of NYNEX Corporation and Bell Atlantic Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 19,987 ¶ 2 & n.2 (1997) (“*Bell Atlantic/NYNEX Order*”)); *Applications of MCI Communications Corporation and British Telecommunications P.L.C.*, Memorandum Opinion and Order, 12 FCC Rcd 15,351, 15,367 ¶ 33 (1997) (“*BT/MCI Order*”).

<sup>19</sup> *WorldCom/MCI Order*, 13 FCC Rcd at 18,031 ¶ 10 n.33 (citing 47 U.S.C. § 309(e) (burdens of proceeding and proof rest with the applicant)) and *LeFlore Broadcasting Co., Inc.*, Docket No. 20026, Initial Decision, 66 F.C.C. 2d 734, 736-37 ¶¶ 2-3 (1975) (burden of proof is on licensee on issue of whether applicants have the requisite qualifications to be or to remain Commission licensees and whether grant of applications would serve public interest, convenience and necessity)).

<sup>20</sup> *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,001, 20,007, ¶¶ 29, 36; *BT/MCI Order*, 12 FCC Rcd at 15,367 ¶ 33.

have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>21</sup> By contrast, as a regular part of our public interest analysis, we determine whether the proposed assignee or transferee is qualified to hold Commission licenses.<sup>22</sup>

11. In this case, no petitioner challenges the basic qualifications of either Arch or PageNet as reason why we should not consent to these transfers of control.<sup>23</sup> In addition, we do not find any independent reason to examine further the parties' basic qualifications.

### C. Public Interest Analysis

12. In addition to ensuring that transferor and transferee are duly qualified and comply with the Commission's rules, we also consider, as part of our examination under the "public interest, convenience, and necessity" standard of section 310(d) of the Communications Act, the effects on competition of a proposed transfer of control.<sup>24</sup> Under Commission precedent,

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<sup>21</sup> See *Mobilemedia Corporation, et al.*, 14 FCC RCd 8017 ¶ 4 (rel. Feb. 5, 1999) (citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964)); see also Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *Id.*

<sup>22</sup> See *In re Applications of AirTouch Communications, Inc. and Vodafone Group, Plc*, Memorandum Opinion and Order, DA 99-1200, 1999 WL 413,237 (WTB rel. June 22, 1999) at ¶¶ 5-9.

<sup>23</sup> See generally Mobile Phone Petition; Teletouch Petition.

<sup>24</sup> *SBC/Ameritech Order*, FCC 99-279, at ¶¶ 46-49; *WorldCom/MCI Order*, 13 FCC Rcd at 18,030-33, ¶¶ 9-12. The Commission also has independent authority under Sections 7 and 11 of the Clayton Act to disapprove the acquisition of common carriers engaged in wire or radio communications or radio transmissions of energy in any line of commerce in any section of the country where the effects of such an acquisition may substantially lessen competition, or tend to create a monopoly. 15 U.S.C. §§ 18, 21(a). The Bureau, acting pursuant to delegated authority, 47 C.F.R. § 0.331, chooses not to exercise its statutory authority under the Clayton Act in this case because the Commission's jurisdiction under the Communications Act is sufficient to address all questions regarding the competitive effects of the proposed assignments, including the issue of whether the assignment may substantially lessen competition or tend to create a monopoly. See, e.g., *Craig O. McCaw and American Telephone and Telegraph Company*, 9 FCC Rcd 5836 (1994), *recon. denied on other grounds*, *Memorandum Opinion and Order on Reconsideration*, 10 FCC Rcd 11,786 (1995), *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

our public interest analysis is informed by, but not limited to, traditional antitrust principles.<sup>25</sup> Our analysis encompasses the broad aims of the Communications Act,<sup>26</sup> and includes evaluating whether any public interest benefits may result from the proposed transaction.<sup>27</sup>

## 1. Competitive Framework

13. Our analysis of competitive effects under the Commission's public interest standard consists of three steps. First, we determine the markets potentially affected by the proposed transaction.<sup>28</sup> Second, we assess the effects that the transaction may have on competition in these markets.<sup>29</sup> Third, we consider whether the proposed transaction will result in merger-specific public interest benefits.<sup>30</sup> Ultimately, we must weigh any harmful and beneficial effects to determine whether, on balance, the merger is likely to enhance competition in the relevant markets.

## 2. Analysis of Potential Adverse Effects

14. We note first that no party has challenged this proposed transaction on competitive grounds.<sup>31</sup> Applicants submit that they participate in a broad market for mobile communications services and that a distinct traditional paging market no longer exists for purposes of competitive analysis because of convergence among wireless communications services.<sup>32</sup> While we may share Applicants' views on convergence, we do not at this time embrace their position that consumers

<sup>25</sup> *Satellite Business Systems*, 62 F.C.C.2d 997, 1069, 1088 (1977), *aff'd. sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *SBC-Ameritech Order* FCC 99-279 at ¶ 49.

<sup>26</sup> *WorldCom/MCI Order*, 13 FCC Rcd at 18,030 ¶ 9 (citing *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19,987 ¶ 2 & n.2).

<sup>27</sup> *SBC-Ameritech Order*, FCC 99-279 at ¶ 49; *Bell Atlantic-NYNEX Order*, 12 FCC Rcd at 20,063 ¶ 158; *BT/MCI Order*, 12 FCC Rcd at 15,367 ¶ 33.

<sup>28</sup> Our determination of the affected markets requires us to identify the Applicants' existing and potential product offerings, and may require us to determine which products offered by other firms compete or potentially compete with these offerings.

<sup>29</sup> Depending on circumstances, this step may include the identification of market participants and analysis of market structure, market concentration, and potential entry.

<sup>30</sup> These include but may extend beyond factors relating to cost reductions, productivity enhancements, or improved incentives for innovation. *See Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20,014, ¶ 49; *BT/MCI Order*, 12 FCC Rcd at 15,368, ¶ 35. *See also* Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission, 57 Fed. Reg. 41,552, §§ 2.1, 2.2, 4 (dated Apr. 2, 1992, as revised, Apr. 8, 1997) ("*Merger Guidelines*").

<sup>31</sup> The petitions of Mobile Phone and TeleTouch and the comments of Metrocall address only Applicants' request for a waiver of the narrowband PCS ownership restriction.

<sup>32</sup> Public Interest Statement at 11, 19.

regard a broad array of mobile communications services as sufficiently close substitutes to discipline the pricing of the services that Applicants provide. Nevertheless, assuming without formally deciding that the relevant product market in this case is traditional, one-way paging, we find that there is credible evidence supporting Applicants' view that this transaction will not enable the merged entity to behave in an anticompetitive manner.

15. We recognize that Arch and PageNet are the nation's two largest paging carriers. Were they to combine as proposed, the merged entity would have about 16 million customers, or approximately 32 percent of the traditional paging subscriber base nationwide.<sup>33</sup> In some local markets, we would expect the merged entity to have larger shares of this business. However, the record also indicates that prices for traditional paging services have continued to decline notwithstanding recent industry consolidation.<sup>34</sup> We also observe that, in addition to New Arch, four other major paging carriers would remain post-merger in twelve of the fourteen geographic areas in which this transaction will most elevate spectrum concentration.<sup>35</sup> In addition, paging carriers face growing competition from short messaging services (SMS)<sup>36</sup> and other digital service features offered by an increasing number of mobile voice carriers. Furthermore, evidence submitted in the record indicates that competing paging carriers have excess spectrum capacity,<sup>37</sup> which appears to remove spectrum as a potential barrier to entry or the expansion of sales by competing carriers. Finally, our recent auction of spectrum in the 929-931 MHz band should facilitate further entry or capacity expansion. Therefore, to the extent that this transaction raises concerns regarding prospects for anticompetitive conduct arising out of increased market concentration, we conclude that the above factors in combination substantially mitigate those concerns.

<sup>33</sup> *Paging Network To Miss Interest Payments*, Dow Jones News Service, Jan. 27, 2000.

<sup>34</sup> *The Strategis Group, The State of the U.S. Paging Industry: 1999* (1999), at 31, Table 4.2.

<sup>35</sup> Letter from Kathryn A. Zachem, Counsel for Arch Communications Group, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, dated February 23, 2000, at Merged Entity Aggregate Channel Analysis pp. 1-15 ("*February 23 Ex Parte Letter*"). These 14 markets are Buffalo and Albany, NY; Birmingham, AL; Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo, OH; Providence, RI; West Palm Beach and Miami, FL; and Boston and Worcester, MA. In Akron and Columbus, OH, three other major paging carriers would remain.

<sup>36</sup> SMS is a digital feature offered by some cellular, broadband PCS, and SMR carriers that permit users' handsets to include the functionality of one-way paging and messaging devices. Without deciding whether SMS should formally be considered, under the *Merger Guidelines*, as part of the paging market, our analysis indicates that the competitive effect of SMS on that market is roughly equivalent to a 10-12% reduction in market share.

<sup>37</sup> *February 23 Ex Parte Letter* at Capacity Analysis pp. 2-6.



### 3. Analysis of Public Interest Benefits

16. We also examine the potential pro-competitive benefits attributable to the transaction. Arch and PageNet contend that New Arch would provide several pro-competitive and efficiency benefits.<sup>38</sup> Specifically, Applicants state that their merger would create a stronger, more efficient, and more vigorous competitor in the mobile communications marketplace by combining the complementary strengths of the pre-merger entities, which include Arch's expertise in direct marketing and retail distribution and PageNet's state-of-the-art billing system, technologically advanced network, and leading role in the introduction of advanced messaging services.<sup>39</sup> Applicants claim that this combination would give New Arch the ability to market a broad array of both traditional and advanced services across direct, resale and retail markets, as well as the breadth of assets, technology, marketing, and managerial skills necessary to compete in the converging marketplace of mobile wireless communications services in which other CMRS providers now offer paging services.<sup>40</sup> Applicants also claim that the larger combined subscriber base would create incentives for manufacturers to engage in research, development, and deployment of new equipment and a broad array of new, innovative services.<sup>41</sup>

17. We find that combining PageNet's technological leadership with Arch's sales and marketing expertise – as well as Arch's relative financial stability – is likely to lead to merger-specific benefits for the public. In particular, while both companies hold narrowband PCS licenses, PageNet has been a leader in attempts to develop the sort of communications services for which the Commission intended this spectrum when it was auctioned in 1994. The combination of PageNet's narrowband operations with Arch's relative financial and marketing strength is likely to result in faster and more robust development of narrowband PCS services, which has been a goal of this Commission since that auction. In that light, we also find credible that the merged entity will be better positioned to introduce market innovations.

18. Applicants also note the companies' financial difficulties and contend that the merger will provide benefits by creating a financially stronger company better able to offer new products and services to its customers and, generally, to compete in the mobile wireless communications marketplace.<sup>42</sup> We recognize the financial difficulties that PageNet is

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<sup>38</sup> Public Interest Statement at 25-29.

<sup>39</sup> See generally *id.* at 26-28.

<sup>40</sup> See *id.* at 30. Applicants point to competitors such as AT&T, Bell Atlantic, Vodafone AirTouch, Nextel, and, potentially, MCI/WorldCom/Skytel/Sprint PCS. *Id.*

<sup>41</sup> *Id.* at 28.

<sup>42</sup> Public Interest Statement at 25, 28-29.

experiencing, as well as the fact that consummation of this transaction would ensure continuous service to millions of current PageNet customers.<sup>43</sup> While the proposed merger may not be the only way to address these concerns, we nevertheless recognize as a legitimate public interest benefit of the transaction the fact that this merger offers the most immediate prospect that PageNet subscribers will enjoy the continued availability of services. On the basis of this record, therefore, we conclude that Applicants have furnished sufficient grounds for us to conclude that this transaction will provide meaningful public interest benefits.

#### **D. Narrowband PCS Multiple Ownership Restriction**

19. Applicants request a temporary waiver of the Commission's narrowband PCS ownership restriction,<sup>44</sup> pending the outcome of an ongoing rulemaking involving the narrowband PCS rules.<sup>45</sup> The current Section 24.101(a) limits each narrowband PCS licensee to holding a five-percent or greater ownership interest in no more than three of the 26 channels in any geographic area.<sup>46</sup> For the reasons discussed below, we grant Applicants a temporary waiver of Section 24.101.

20. The proposed transfers of control would consolidate PageNet's two 50/50 kHz narrowband PCS networks and one unpaired 50 kHz channel with Arch's two 50/12.5 kHz channels.<sup>47</sup> Thus, as proposed, the merged entity would hold a total of five narrowband PCS channels throughout the nation.<sup>48</sup> Applicants argue that waiver of the aggregation limit would serve the public interest because the rule no longer serves its underlying purpose of promoting competition, and its elimination would promote competition in the emerging mobile wireless communications market.<sup>49</sup> In addition, Applicants assert that it would be inequitable for the Commission to require them to comply with the ownership limit prior to consummation of the proposed transaction given that the Commission is considering modification of this rule in the *Narrowband PCS Further Notice of Proposed Rulemaking*.<sup>50</sup>

<sup>43</sup> See *supra* ¶ 6.

<sup>44</sup> Public Interest Statement at 38-51; Joint Opposition to Petitions to Deny and Reply to Comments, filed February 10, 2000, by Arch Communications Group, Inc. and Paging Network, Inc. ("Joint Opposition") at 7-9.

<sup>45</sup> See *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12,972 (1997) ("*Narrowband PCS Further Notice of Proposed Rulemaking*").

<sup>46</sup> 47 C.F.R. §§ 24.101(a), 24.129.

<sup>47</sup> Public Interest Statement at 38-39.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 39-46.

<sup>50</sup> Public Interest Statement at 46-48. Applicants note that several parties commenting on the *Narrowband PCS Further Notice of Proposed Rulemaking* advocated elimination of the aggregation cap. *Id.* at 47-48, n. 78.

21. Mobile Phone, Teletouch and Metrocall each address the issue of the Applicants' request for a temporary waiver of the narrowband PCS ownership restriction. Mobile Phone and Teletouch contend that Applicants have failed to establish a public interest justification to support their waiver request.<sup>51</sup> In particular, they argue that the ownership limitation remains necessary for achieving competitive markets, and they contest Applicants' assertions that the paging market now competes directly with broadband CMRS services.<sup>52</sup> Petitioners also allege that, were the waiver granted, the consolidation of the Applicants' businesses would give the combined company an unfair economic advantage in the narrowband PCS market.<sup>53</sup> Meanwhile, Metrocall encourages the Commission to repeal the narrowband PCS ownership restriction rather than waive it.<sup>54</sup> Absent repeal of the rule, Metrocall opposes granting Applicants' waiver request beyond allowing them a reasonable time to divest sufficiently to comply with the restriction.<sup>55</sup>

22. We conclude that the applicants have not supported the grant of an indefinite waiver of the narrowband PCS ownership restriction pending outcome of the rulemaking. While the Applicants address whether the underlying purpose of the narrowband PCS ownership restriction rule would be served in this case by its strict application, their remaining arguments largely address whether or not the rule should be retained at all. Such arguments are relevant to the rulemaking itself and not to a request to waive the rule for individual licensees.<sup>56</sup> Thus, the Applicants do not adequately present "unique or unusual factual circumstances" warranting grant of an indefinite waiver. While we do anticipate a decision in the narrowband PCS ownership restriction rulemaking in the near future, we agree with Metrocall that, were we to grant an indefinite waiver until that time, New Arch would have a competitive advantage over other carriers who remain subject to the cap during the pendency of the rulemaking.

23. However, we think that the circumstances do justify granting the applicants a limited amount of additional time to come into compliance with the narrowband PCS ownership restriction, a solution which, we note, Metrocall also supports.<sup>57</sup> Specifically, we grant Applicants until 90 days after consummation of their merger to achieve compliance with the ownership restrictions regarding narrowband PCS.

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<sup>51</sup> Mobile Phone Petition at 3-4; Teletouch Petition at 3-4.

<sup>52</sup> Mobile Phone Petition at 4-9; Teletouch Petition at 4-9.

<sup>53</sup> Mobile Phone Petition at 2; Teletouch Petition at 2. We take the term "narrowband PCS market" to be synonymous with "paging market."

<sup>54</sup> Metrocall Comments at 2-4.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> See 47 C.F.R. § 1.925(b)(3) (stating elements of showing required to support waiver request).

<sup>57</sup> Metrocall Comments at 5.

**E. Conclusion**

24. We find that this transaction is likely to produce public interest benefits. In addition, we conclude that any competitive risks potentially arising from this transaction are likely to be mitigated in a manner that appreciably limits our competitive concerns. On balance, we therefore find that the proposed transaction is in the public interest.

**IV. ORDERING CLAUSES**

25. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the Petition to Deny filed by Mobile Phone of Texas, Inc. and the Petition to Deny filed by Teletouch Licenses, Inc. in this matter ARE DENIED.

26. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the applications referenced above filed by Arch Communications Group, Inc., Paging Network, Inc., and/or the shareholders and/or affiliates of these companies in the above-captioned proceeding to transfer control of Commission licenses ARE GRANTED.

27. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, that the request of Arch Communications Group, Inc. and Paging Network, Inc. for a waiver of Section 24.101(a) of the Commission's rules, 47 C.F.R. § 24.101(a), is GRANTED in part and DENIED in part, as described herein.

28. This action is taken on delegated authority under section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

/s/

Thomas J. Sugrue  
Chief, Wireless Telecommunications Bureau

**APPENDIX A**

**Parties Filing Petitions to Deny**

MobilePhone of Texas, Inc.  
Teletouch Licenses, Inc.

**Parties Filing Comments**

Metrocall, Inc.

**Parties Filing Oppositions**

Arch Communications Group, Inc. and Paging Networks, Inc. (jointly)

**Parties Filing Replies**

Teletouch Licenses, Inc.